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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JASON KINZER, an individual;

Plaintiff,

vs.

ALLEGIANT AIR, LLC, a Nevada limited
liability company; and ALLEGIANT TRAVEL
CO., a Nevada corporation,

Defendants.

Case No. 2:15-cv-02306-JAD-PAL

**RESPONSE TO MOTION
TO EXTEND DISCOVERY**

Now Comes Plaintiff, JASON KINZER, and files his response in opposition to Defendants' Motion to Extend Discovery (ECF No. 40). Defendants offer no valid grounds for a discovery extension in this case. Defendants neither explain what additional discovery they require nor do they proffer any explanation for how they committed excusable neglect in not timely disclosing experts. While Defendants are not entitled to any extension of discovery or expert disclosures, Plaintiff cannot afford any further delay of this trial and will strive to work with Defendants to ensure that no undue delay occurs.

1 Accordingly, counsel for both parties met and conferred in person on May 24, 2016, at
2 the offices of Jackson Lewis, P.C. The Plaintiff had noticed three depositions to be taken before
3 the discovery cut-off date of June 6, 2016. Defendants' counsel expressed difficulty in their
4 schedules to accommodate the dates for those depositions. Recognizing the Court scheduled a
5 hearing for June 28, 2016, on the Defendant's Motion to Extend Discovery, Plaintiff suggested
6 that both parties should work with each other to complete whatever they need in the way of
7 discovery by this date so that both parties can represent to the Court that all discovery issues
8 have been resolved and discovery complete.

9 In that spirit, the parties agreed that Defendants would make themselves available on
10 dates before June 28, 2016, for the three depositions that were scheduled to have been
11 completed by June 6, 2016. Defendants' counsel represented that they would look over the
12 witnesses' disclosures and decide which depositions they would take before the hearing on the
13 Motion to Extend Discovery Deadlines. Plaintiff will do his utmost to ensure that the
14 depositions proceed. Thus far, Defendants have not provided those names to the Plaintiff.
15 Despite agreeing to extend discovery through the date of the hearing on the instant motion,
16 Defendants indicated they would press for the extension requested in the motion.

17 Defendants also suggested that the Court-set deadline date of May 5, 2016, for the
18 disclosure of its experts was a mistake of the Court. Plaintiff does not agree with that
19 contention. However, again in recognition that the hearing on the instant motion would not take
20 place until June 28, 2016, Plaintiff agreed to June 20, 2016, as the final date for Defendants to
21 submit their expert (initial or rebuttal) disclosures, subject to the Court's approval in approving
22 such a stipulated extension to the deadlines.

23 The parties plan to file such a stipulation regarding the above discovery and expert
24 disclosure extensions early next week. The stipulation will not waive Plaintiff's formal
25 opposition to extend discovery and it will not resolve in full Defendants' requested extension to
26 the discovery deadlines. Plaintiff believes discovery could and should have been completed by
27 June 6, 2016, and the Defendants should be awarded no further extensions past the hearing date
28 of June 28, 2016. In support, Plaintiff shows as follows:

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 The facts of this case are simple. On June 8, 2015, Captain Jason Kinzer was piloting
3 Allegiant Air Flight 864 from St. Petersburg, Florida to Hagerstown, Maryland. ECF No. 1 at 12.
4 The information provided to Captain Kinzer and his first officer by the flight attendants was a
5 smell of burning in the passenger cabin and by Fire and Rescue on the ground “there’s fire.” *Id.*
6 at 24:13. Believing that his passengers were in danger, Captain Kinzer in coordination with his
7 first officer ordered an evacuation of the aircraft in accordance with his regulatory responsibility.
8 Defendants conducted a five week “non-punitive safety debrief to acquire lessons learned” from
9 the incident. Email chain between Jason Kinzer and Jennifer Bartenstein at 3, ALGNT 2648,
10 attached hereto and incorporated as **Exhibit 1**. At the conclusion of the five week investigation
11 Defendants terminated Captain Kinzer on July 23, 2015, accusing Captain Kinzer of failing to
12 “preserve the Company’s assets, aircraft, ground equipment, fuel and the personal time of our
13 employees and customers” in making his emergency decision to evacuate. ECF No. 1 at 31. On
14 November 10, 2015, Plaintiff filed suit in state Court—and Defendants timely removed this
15 matter to this Court on December 7, 2015.

16 This Court entered a Scheduling Order in the case due to the parties’ failure to comply
17 with Local Rule 26-1. ECF No. 21 at 1:19. The Scheduling Order explicitly abrogated Local
18 Rule 26-1 (e)(3) and required the parties to simultaneously disclose expert witnesses. Despite
19 being “entirely aware of the deadlines in this case” Allegiant waited until May 12, 2016—a week
20 after its expert deadline had past—to move this court for an extension of the deadline. ECF No.
21 40 at 18. The deadline in the Court’s Scheduling Order specified that Defendants experts must be
22 disclosed by “May 5, 2016.” ECF No. 21 at 2:1. Defendants confess that they have not retained
23 experts much less disclosed their identity. ECF No. 40 at 9:19–21. Defendants have not provided
24 any reason for their failure to comply with the Court Ordered expert deadline—despite an
25 apparent awareness of the disclosure requirement.

26 Defendants have sought extensions at every juncture of this matter. As noted in its
27 Motion, Defendants did not provide their initial disclosures until March 3, 2016. To date, only
28

1 Defendant Allegiant Air LLC has responded to Plaintiff's discovery.¹ Defendant Allegiant Air,
 2 LLC needed an extra two weeks to respond to Plaintiff's initial discovery, and could not conduct
 3 depositions in March due to defense counsel's vacation—delaying the start of taking depositions
 4 by a month. Email chain between Sean McDonald and Veronica Hall at 2, 4, attached hereto and
 5 incorporated by reference as **Exhibit 2**. Plaintiff has promptly responded to all discovery
 6 requests. Plaintiff timely served his expert reports and has scheduled all depositions in the case to
 7 end by Court imposed discovery deadline of June 6, 2016. Except for the three depositions
 8 mentioned, Plaintiff will be ready for trial after June 6, 2016.

9 **II. LAW AND ARGUMENT**

10 When the Defendants removed this case to Federal Court they must have been aware of
 11 the standard discovery deadlines imposed by Local Rule 26(e)(1) establishing 180 days from the
 12 Defendant's answer to complete discovery. Despite awareness of LR 26(e)(1) and the
 13 simultaneous disclosure of experts in the Scheduling Order (ECF No. 21), the Defendants never
 14 requested a special scheduling review as required by LR 26-1(d). Having now missed their
 15 expert deadline, Defendants seek to avoid their mistake and retrospectively obtain by stealth a
 16 special scheduling when such a request should have been presented months ago.

17 The purpose of a scheduling order is "to establish deadlines to foster the efficient
 18 treatment and resolution of cases." *Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1060
 19 (9th Cir. 2005). A trial court's case management efforts "will be successful only if the deadlines
 20 are taken seriously by the parties, and the best way to encourage that is to enforce the deadlines."
 21 *Id.* at 1061. A scheduling order is not a frivolous piece of paper, idly entered, which can be
 22 cavalierly disregarded by counsel without peril. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
 23 604, 610 (9th Cir. 1992).

24 Defendants extoll the virtues of the new Rule 1 in requesting their discovery extension.
 25 Plaintiff also believes Rule 1 is vital to deciding Defendants' motion. Rule 1 requires the Court
 26 and the litigants "to secure a just, *speedy*, and inexpensive determination of every action."

27 ¹ Defendant Allegiant Travel Company, as part of a meet and confer, recently acknowledged during depositions that
 28 it needed to respond to discovery. To date, Plaintiff has not received any discovery responses from Allegiant Travel
 Company.

Plaintiff has been without a regular job since he was discharged by the Defendants. Because of the nature of the aviation industry, Plaintiff's chances of employment with another air carrier are ruined. Plaintiff cannot afford any delay in this matter. Defendants only needed five weeks to investigate Plaintiff's decision making ability concerning what action to take as pilot in command of a smoking aircraft—Defendants fail to describe with any particularity what new information exists to justify a discovery extension, and what has prevented them from obtaining it. It is inconceivable that Defendants need more information to justify what they did to Captain Kinzer by firing him on July 23, 2016. Plaintiff believes that the only reason Defendants seek an extension is for delay.

III. CONCLUSION

Defendants have not provided any reasons—much less excusable neglect—for their failure to timely disclose experts. Defendants also fail to detail the additional discovery they allegedly require in this case. Nevertheless—and in recognition of the fact the Court did not set a hearing on the motion to extend discovery until June 28, 2016—Plaintiff agreed to postpone the three depositions mentioned and Defendants agreed to confer on mutually convenient dates and allow Defendants to disclose their experts by June 20, 2016, subject to Court approval (proposed stipulation will follow). Accordingly, any additional discovery requested past June 28, 2016, the date of the hearing on the Motion to Extend Discovery, should be denied.

Dated: May 27, 2016

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Counsel for Plaintiff, Jason Kinzer

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2016, I electronically filed the foregoing **RESPONSE TO MOTION TO EXTEND DISCOVERY** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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and I hereby certify that have mailed by United States Postal Service the document to the following non-CM/ECF participants:

[none]

/s/ Sean W. McDonald
An Employee of The Urban Law Firm

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